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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,776	02/22/2002	Denise Crites Tears	16,870B	1148
23556	7590	08/22/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			REICHLE, KARIN M	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

3761

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,776

Applicant(s)

TEARS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 21-26 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: These new claims are directed to a species of the claimed invention comprising a method of securing an absorbent article to a primary absorbent undergarment with a refastenable waist and manually tearable side seams wherein the absorbent article includes an impediment layer positioned between the core and liner, an exterior surface of the liner having a high coefficient of friction in addition to attachment means and a bodyside cover of higher liquid permeability than the liner but no elastic in the fringes or attachment means peel strip whereas the originally present patentably distinct species of the claimed invention comprises a method of securing an absorbent article to a primary absorbent undergarment without a refastenable waist wherein the absorbent article includes at least two absorbent articles secured to the undergarment at the same time, attachment means with a releasable peel strip and a bodyside cover and liner having the same permeability but no impediment layer between the core and liner, no exterior surface of the liner having a high coefficient of friction and no elastic in the fringes. Originally filed claims 1, 3-5, 7-9 and 11 considered generic to both species are treated on their merits *infra*.

2. Since applicant has received an action on the merits for the originally presented species, this species has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 21-26 are withdrawn from consideration as being directed to a non-elected species. See 37 CFR 1.142(b) and MPEP § 821.03.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

Specification

3. It is noted that the abstract filed on June 7, 2005 does not comply with 37 CFR 1.121 because it was not presented on a separate sheet. Correction should be provided in the next response, if any.

Claim Objections

4. Claims 1-8, 12-14 and 20 are still objected to because of the following informalities: Claim 1, line 18, claim 12, line 9 and claim 20, line 1 appear to be missing a word or words. For example, in claim 1, "matching" what? Note claim 12, section d). In claim 12, after "cover", should --and said liner-- be inserted. Note section a) of claim 1. In claim 20, line 1, should "said" be --wherein said absorbent article includes-- and after "articles", --which-- should be inserted. Appropriate correction is required.

Claim Language Interpretation

5. The claims set forth "attachment means". However such claim language invokes 35 USC 112, sixth paragraph, and thus is interpreted to cover the corresponding structure described in the specification, i.e. at the paragraph bridging pages 9-10, and equivalents thereof. Such language requires that the prior art element perform the identical function specified in the claim,

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i.e. attachment of the absorbent article to the primary undergarment. It is noted that in claim 15, section e) “positing” should be --positioning--.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unicharm Corp. EP ‘110, referred to by Applicant as Fujioka.

See abstract, Figures, paragraphs 5, 14, 20, 27, 30-40, 49, 54, 59-60 and 64, i.e. the undergarment is 1, its cover is 2, its baffle is 3, its absorbent is 4 and the opening and crotch portion are disclosed at paragraphs 29 and 30, the article is 20, its cover is 21, its backing layer is 22, its core is 23 and its attachment means is 26 or 45, and claims, especially claim 1, i.e. no elastics claimed, and claim 12, i.e. cover and liner with same liquid permeability. It is noted that paragraphs 31-32 and 60 disclose the absorbent article having an adhesive for attaching it to a primary absorbent undergarment. As discussed supra in the Claim Language Interpretation section, this is the same structure as disclosed at the paragraph bridging pages 9-10 of the instant application and such same structure performs the same function. Therefore, it is the Examiner’s position that such is equivalent to the claimed “attachment means”. Therefore the Unicharm reference teaches, explicitly or implicitly, a method of securing an absorbent article to a primary undergarment including the claimed structure of the article and garment, and the steps of forming the article, positioning the article on the legs of the wearer, placing the absorbent article over the crotch portion of the undergarment prior to the diaper being completely pulled up or fitted to the

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torso, using “attachment means” to secure the article and undergarment including removing a peel strip and putting, i.e. pressing, the “attachment means”, and thereby article, against the crotch portion (It is noted that the terminology “firmly” is considered relative absent claiming of specific dimensions thereof), the flexible article acquiring a curved configuration and forming upstanding side walls which form reservoirs, positioning or pulling the undergarment up around the torso, i.e. completely pulling up or fitting the undergarment to the torso, such that the side walls are aligned against the wearer's groin, withdrawing the undergarment from the torso, removing the soiled absorbent article, replacing the soiled article with a new article, and securing two articles to the undergarment at the same time. The Unicharm reference however does not disclose any particular order of the steps of positioning the undergarment on the wearer and securing the article thereto, i.e. securement of the article before or after placement of the undergarment on the legs, and if after, the steps of claims 3-5, i.e. stretching the crotch portion or the placement or placement and securement of the article to the undergarment while the undergarment is at a particular position on the body other than not at a position where the undergarment is completely fitted to the torso. Yet also note page 11, lines 22-25, page 12, lines 6-31 and page 14, lines 19-33 of the instant application, i.e. it is disclosed that the garment is applied in a fashion similar to that of conventional underwear, there is no criticality disclosed with respect to any particular article attachment position of the undergarment with respect to the wearer's legs except the undergarment can not be completely pulled up or fitted to torso, there is no criticality disclosed with respect to the stretching out of the crotch portion by spreading legs apart as the user is raising or pulling up garment and it is disclosed that the absorbent article assumes a shape of the undergarment due to attachment to a similarly shaped undergarment.

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However, again, Unicharm does teach the desire to combine the article and undergarment prior to complete fitting of the undergarment to the torso and maintaining such combination completely fitted to the body to contain body fluids and teaches the steps of attaching and positioning of the article on the crotch portion. Additionally, the claimed order of steps, i.e. attachment before or after placement on the legs, and the steps of claims 3-5 are conventionally practiced, i.e. are well known, by wearers during securement of other well known absorbent articles such as, e.g., incontinence pads and sanitary pads, to other well known undergarments such as, e.g., cotton underwear, in order to form combination garments for containment of fluid. Furthermore, it would be obvious to one of ordinary skill in the art that the order of steps practiced by a user would depend on a variety of factors at the specific time of use. For example, one factor is where the securement is taking place, i.e. a wearer would be more likely to attach the article to the garment prior to the positioning of the garment on the body or replacing a used article in a garment which has been totally removed from the body when such attachment/replacement takes place in ones home since there is more room to move around in and at least a perception that such is a more hygienic environment than, for example, a public bathroom. Another factor would be the physical condition of the user, i.e. a user who is handicapped or less agile or dexterous would be more likely to attach or replace the article in the undergarment with a particular order of steps. It would also be obvious to one of ordinary skill in the art that spreading the crotch portion out whether by hand before or after placement of the undergarment on the body or by spreading ones legs while one is raising or pulling up the garment would all lessen the possibility or occurrence of there being wrinkles in such portion during attachment of the attachment means to the portion and thereby, the attachment of the

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attachment means to the portion would be better, i.e. the combination would be better combined. Therefore to employ the claimed steps for securing an absorbent article to an undergarment for securing the absorbent article as taught by Unicharm to the undergarment as taught by Unicharm, if not already so secured, would be obvious to one of ordinary skill in the art in view of the recognition that such steps are well known to provide a combination of an absorbent article and undergarment and the desire of Unicharm for such combination, especially in light of the lack of disclosure of criticality. The particular order of steps employed would be obvious to one of ordinary skill in the art dependent on factors present at the time of use such as location in which the wearer is at when such attachment takes place, i.e. home, away from home, the physical condition of the user, etc. It also would be obvious to one of ordinary skill in the art that spreading out of the crotch portion during attachment, e.g. by spreading the legs as the undergarment is being raised or pulled or any other manner, would better ensure the attachment of the article and garment in combination and the desire of Unicharm for such combination.

Response to Arguments

8. Applicant's remarks of 6-7-05 with respect to matters of form have been considered but are either deemed moot in that such issues were not reraised or deemed not persuasive for the reasons set forth supra. Applicant's remarks of 6-7-05 with respect to the prior art have been considered but are deemed not persuasive because they are not commensurate in scope with the claim language, the teachings of the prior art and/or the prior art rejection set forth in the prior Office Action. For example, with regard to claim 1, Applicant's first point is narrower than the teachings of Fujioka which necessarily explicitly or implicitly teaches the step b) of claim 1 at

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paragraph 30 because it teaches using a pants type diaper and applying such to the user. The first point is also narrower than the claim language of claim 1 which does not require stretching the undergarment by spreading the legs. For a second example, Applicant's second point is also narrower than the claim language and teachings of Fujioka. Paragraph d) of claim 1, as best understood, see claim objections supra, require the secured absorbent article to acquire a curved configuration matching that of the primary article. While Fujioka shows the absorbent article having a curved profile before securement to the diaper, such does not match the configuration of the diaper until such is secured thereto. Similarly with respect to the third point, section d) requires the secured article acquiring a curved configuration matching and causing the fringes to be biased upward, i.e. requires both matching and causing due to the configuration. As noted with respect to the second point both are not present until securement. Nor do the claims require upward biasing only due to such securement. Finally, Fujioka does not teach that the elastic must be present. See, e.g., claim 1 thereof, which was also cited in the Office Action, which claim does not require elastics. With regard to Applicant's fourth point, as already discussed with regard to Applicant's second and third points, the claim language does not require the article does not have upstanding side walls prior to securement or only due to securement. Applicant's fifth point does not appear to be consistent with the other points argued, i.e. a pair of upstanding walls at the fringes are included by Fujioka as argued by Applicant, or the Fujioka teachings, i.e. fringes are at the sides of the absorbent as clearly disclosed, i.e. necessarily reservoirs are formed adjacent the core. Applicant's sixth point is not consistent with Fujioka at col. 9, lines 29-30 for example. As a final example, Applicant's remarks with respect to claim 2 are not consistent with the teachings of Fujioka, i.e. the portion cited by Applicant is only one of

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the embodiments disclosed, see, also, for example, paragraphs 15 and 54 and claim 12. It is also noted that claim 2 does not require the same materials form both the cover and liner.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any new issues raised were necessitated by the addition of claims 21-26.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 15, 2005